

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 18/11/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Crl.R.C.No.1751 of 2004

Edwin ... Petitioner

-vs-

Ashok Kumar ... Respondent

Revision filed under Sections 397 and 401 Cr.P.C. praying for as stated below.

!For Petitioner : Mr. S.Doraisamy

^For Respondent : -

:O R D E R

The above criminal revision case has been filed praying to call for the records relating to the order made in C.M.P.No.2806 of 2004 in C.C.No. 34 of 1999 dated 5-10-2004 on the file of the Judicial Magistrate I, Mettur and set aside the same.

2. The learned counsel for the petitioner would submit that in the regular course of trial the witnesses have been examined by the Court of Judicial Magistrate I, Mettur, particularly P.Ws. 2 and 3, who are said to be the Bank Officials, since the case is one registered under Sections 138 and 142 of Negotiable Instruments Act by the respondent herein. The petitioner, who is the accused has filed a petition under Section 311 Cr.P.C. seeking to re-examine P.Ws. 2 and 3 before the trial Court.

3. The learned counsel appearing on behalf of the petitioner would further come forward to say that since the signature is disputed, it is upto the otherside to take such steps to confirm the signatures as though it is not his responsibility to prove or disprove the same. Summons have been ordered for being served on P.Ws. 2 and 3, but it would not able to be served, since returned as not found in the address. In these circumstances the learned Magistrate has decided to carry on with the trial, without further straining itself for examining P.Ws. 2 and 3 the second time for the purpose that it was required by the petitioner/accused, since he has failed to serve the summons on those witnesses, so as to bring them to fore for being cross-examined sufficiently. It is under these circumstances, the lower Court has decided that it is not the duty of the prosecution to furnish their addresses, when the P.Ws. 2 and 3 have already been examined as witnesses in their official capacity and hence, considering such vital aspects it has dismissed the petition and it is against this order

passed by the lower Court the petitioner/accused has come forward to file the above Criminal Revision Case on such grounds as aforementioned.

4. Today, when the above Criminal Revision Case was taken up for admission, since prima facie no case is made out on the part of the revision petitioner for the above Revision Case to be admitted, this Court having gone through the facts and circumstances of the case and upon hearing the learned counsel for the petitioner is able to assess that it is the petitioner, who sought for re-examining the P.Ws. 2 and 3 and since inspite of an opportunity being afforded to the petitioner, he failed to serve summons on those witnesses so as to be brought before the Court it is quite natural that the lower Court has decided to carry on with further trial and therefore, this Court is not able to see any inconsistency or legal infirmity or an error committed on the part of the lower Court in passing such an order, closing the drama of re-examination of P.Ws. 2 and 3 and ordering for further proceedings of the case and hence, this Court is of the view that by admitting the above Criminal Revision Case no fruitful purpose is going to be achieved and it is liable only to be dismissed at the admission stage itself and hence, the following order.

In result,

(i) the above Criminal Revision Case does not merit admission and becomes liable to be dismissed at the admission stage itself and the same is dismissed accordingly;

(ii) the order dated 5-10-2004 made in C.M.P.No. 2806 of 2004 in C.C.No.34 of 1999 on the file of Judicial Magistrate I, Mettur, is confirmed;

(iii) consequently, the connected Crl.M.P.No. 10505 of 2004 is also dismissed.

Index: Yes

Internet: Yes

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To

1.The Judicial Magistrate I
Mettur.

2.-do- thro' The C.J.M., Salem.

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